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February 3, 2011

Hancock Fenton, Chair  
Board of Appeals  
Town of Lamoine  
606 Douglas Highway  
Lamoine, Maine 04605

Mr. Stu Marckoon  
Administrative Assistant to the Selectmen  
Town of Lamoine  
606 Douglas Highway  
Lamoine, Maine 04605

Re: Doug Gott & Sons, Inc.  
Appeal of the Planning Board's Denial of Site Plan Approval  
and the Denial of a Gravel Permit

Gentlemen:

Enclosed please find six copies of the completed Application for Appeal to the Board of Appeals on behalf of Doug Gott & Sons, Inc. and the following supporting documentation:

1. Appellant's Summary of Arguments on Appeal;
2. Minutes of the December 7, 2010, Lamoine Planning Board meeting;
3. January 5, 2011, memo from the Lamoine Planning Board regarding reasons for the denial of a Site Plan Review Permit and a Gravel Permit sought by Doug Gott & Sons, Inc.;
4. Page 47 of the Lamoine Comprehensive Plan;
5. Witness List; and
6. The Application for Site Plan Review and Application for Gravel Extraction Permit prepared by Herrick & Salsbury, Inc. and dated September 15, 2010, together with all documents submitted to the Planning Board.

Also enclosed is our check in the amount of \$50.00 representing the fee.

Very truly yours,



Michael L. Ross  
MLR:thb  
Enclosures

**Town of Lamoine**  
**Application for Variance or**  
**Appeal to the Board of Appeals**

Name of Appellant Doug Gott & Sons, Inc.

Mailing Address c/o Michael L. Ross, Esquire, PO Box 1123

City or Town Ellsworth, Maine 04605

Telephone (Home) \_\_\_\_\_ (Work) 667-1373

Name(s) of Property Owner Doug Gott & Sons, Inc.  
re: Map 3, Lot 8 (former Stephens lot)

The undersigned requests that the Board of Appeals consider one of the following:

X 1. An Administrative Appeal. Relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

X an error was made in the denial of the permit

X the denial of the permit was based on a misinterpretation of the ordinance

\_\_\_\_\_ there has been a failure to approve or deny the permit within a reasonable period of time

\_\_\_\_\_ other \_\_\_\_\_

Please explain in more detail the fact surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case. Doug Gott & Sons, Inc. appeals the Planning Board's denial of Site Plan approval and the denial of a gravel permit.

2. A Variance.

a. Nature of Variance: Describe generally the nature of the variance.

In addition, a sketch plan of the property must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings, or alterations, and any natural or topographic peculiarities of the lot in question.

b. Justification of Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the zoning ordinance would cause undue hardship. There are four criteria which must be met before the BOA can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

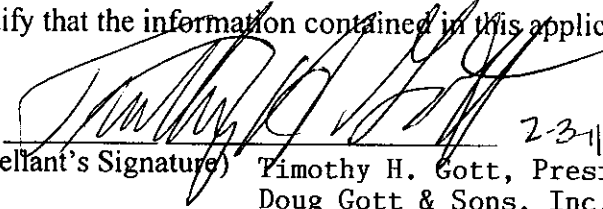
1. The land in question cannot yield a reasonable return unless the variance is granted.


2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.

3. The granting of a variance will not alter the essential character of the locality.

4. The hardship is not the result of action taken by the appellant or a prior owner.

I certify that the information contained in this application and its supplement is true and correct.

 2-3-11  
(Appellant's Signature) Timothy H. Gott, President  
Doug Gott & Sons, Inc.

 2-3-11  
Michael L. Ross, Esquire  
Attorney for Appellant

Note to Appellant: This form should be returned to the Chairman of the Board of Appeals. You will be notified of the date, time and location of the hearing on your appeal.

# APPEAL TO LAMOINE BOARD OF APPEALS

Name of Appellant Doug Gott & Sons, Inc.  
Mailing Address 110 Bass Harbor Road, Southwest Harbor, ME 04679  
City or Town Lamoine  
Telephone (Home) \_\_\_\_\_ (Work) \_\_\_\_\_  
Name(s) of Property Owner Doug Gott & Sons, Inc.

## APPELLANT'S SUMMARY OF ARGUMENTS ON APPEAL

### I. Site Plan Review

Doug Gott & Sons, Inc., the owner of property located at Map 3, Lot 6 and Map 3 Lot 8 in Lamoine hereby appeals the Planning Board's January 5, 2011 denial of its application for Site Plan Review in connection with the proposed expansion of an existing gravel pit.

Under the Lamoine Site Plan Review Ordinance, the Planning Board is obliged to review applications for site plan approval according to the General Review Standards. The General Review Standards are, in turn, comprised of 20 different criteria. Under the Ordinance, "[t]he board shall approve the application unless the proposal does not meet the intent of one or more of the . . . [twenty] criteria[.]" Site Plan Review Ordinance at § J.

In this case, the Board purportedly voted against Doug Gott & Sons' application because the application failed to meet Review Standards 1 and 16. However, as will be outlined more fully below, the Board's conclusions in this regard were erroneous and must be overturned.

#### A. Review Standard 1: Preserve and Enhance the Landscape

Review Standard 1 requires that a proposed use "preserve and enhance the landscape." In order to "meet the intent" of Review Standard 1:

The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, and retaining existing vegetation during construction. After construction is completed, landscaping shall be designed and planted that will define, soften or screen the appearance of the development and minimize the encroachment of the proposed use on neighboring land uses.

Environmentally sensitive areas such as aquifers, significant wildlife habitat, wetlands, steep slopes, floodplains, historic buildings and sites, existing and potential archaeological sites and unique natural features will be maintained and preserved to the maximum extent.

Site Plan Review Ordinance at § J(1).

Points of Error:

- The Board made absolutely no findings of fact relating to whether the project will preserve natural landscaping “as much as is practicable.” Instead, it conducted a wholly irrelevant comparison between the benefits of the pit to the landowner and the costs to surrounding properties. Under the plain language of the ordinance, the Board’s analysis is neither an appropriate nor a relevant basis for denying site plan approval.
- Voting: In addition to the Planning Board’s misinterpretation and misapplication of the ordinance, its conclusion that Review Standard 1 did not pass because “[t]he Planning Board did not vote in the affirmative that the application met this standard” is plainly erroneous.
  - As the Board’s decision explains, there were two votes in favor of Review Standard 1 having been met and 2 votes opposed. One member, the Secretary, abstained without explanation. Although there were two alternate members present at the hearing, neither of them voted.
  - Contrary to the Board’s written decision, a “tie” constitutes a vote in favor of the action, not a vote in opposition. As one noted authority on municipal corporations has explained: “the general rule is that” those who are present but have refused to vote “are regarded as having voted affirmatively; i.e. for the proposition, or to have voted with the majority.” 4 McQuillin, Municipal Corporations § 13.32 at 889. Similarly, “[i]f a quorum is present, the refusal to vote will not defeat the action.” *Id.* at 890.

B. Review Standard 16: Conformance with the Comprehensive Plan

Review Standard 16 provides that “[t]he development shall be in conformance with the comprehensive plan.” Site Plan Review Ordinance at § J(16).

The Board voted 0-5 in favor of the application’s conformance with the Comprehensive Plan. As justification for its vote, the Board, among other things: (1) engaged in a “cost/benefit” analysis as to whether

the Applicant, in effect, “really needs to use the property as a gravel pit,” (2) concluded that approval of this gravel pit “would expand the sand and gravel extraction area yet further into land zoned essentially for residences;” and (3) discussed its displeasure with large corporations profiting from gravel pits in Lamoine.

#### Points of Error

- Contrary to the Board’s conclusion, gravel pits are expressly contemplated by the Comprehensive Plan and are, thus, “in conformance” with it. The Plan provides, in relevant part:

The remainder of the town shall be classified Rural and Agricultural with rules similar to the current land use rules but more restrictive to commercial uses and encouraging to agricultural usage, permitting residential usage, including (but not limited to) bed and breakfasts, housing for the elderly, and nursing homes. This area would prohibit heavy industrial usages, quarrying and mining of all types but sand and gravel removal would still be permitted. Also prohibited would be new private dumps, automobile graveyards, and any usages that might lead to toxic waste contamination of the aquifer.

Lamoine Comprehensive Plan § 1(G) (emphasis added).

- Even if the express language of Comprehensive Plan could somehow be read such that gravel pits are not “in conformance” despite the fact that they are expressly contemplated by the Plan, Review Standard 16 and the Board’s reliance on the Comprehensive Plan is improper.
  - Maine’s Law Court has expressly held that comprehensive plans are merely “visionary,” not “regulatory,” and that it is the ordinances enacted by municipalities in order to enforce the comprehensive plan that govern. *See Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702. According to the court,

[a] comprehensive plan imposes an obligation on the *town*, not on private citizens or applicants for permits. It dictates how the town effectuates its land use planning obligations. The ordinance is the translation of the comprehensive plan’s goals into measurable requirements for applicants. . . .

*Id.*, 2009 ME 30, ¶ 24, 967 A.2d at 709.

- In light of the *Nestle* case, it was improper for the Board to require conformance with the Comprehensive Plan. It is the standards outlined in the Site Plan Review Ordinance, and those standards alone, that govern applications. Review Standard 16 fails to recognize that conformance with the Ordinance is the only proper standard and a requirement that an application also conform to the Comprehensive Plan is both redundant and unlawful. The Board's application of Review Standard 16 and its conclusions are therefore erroneous.
- Review Standard 16 and the Board's application of it is unconstitutional.
  - Part of the reason why enacted ordinances must govern permit and other applications, rather than the Comprehensive Plan, is that it is the Ordinance that dictates review criteria and appropriately limits the Planning Board's discretion. In this case, the Planning Board's decision – and the fact that it expressly used Review Standard 16 as justification for weighing whether there is a “compelling need” for the proposed gravel pit evidences the fact that Review Standard 16 impermissibly and unlawfully delegates to the Board the authority to “express a legislative-type opinion about what is appropriate for the community.” *Kosalka v. Town of Georgetown*, 2000 ME 16, ¶ 14, 752 A.2d 183, 186. As Maine's Law Court has previously explained, when an ordinance “fails to articulate the quantitative” bounds of an administrative board's discretion, the ordinance constitutes an unlawful delegation of legislative authority and, therefore, violates due process.
- The Board expressly stated that a basis for denying the application is the fact that the Applicant is a commercial business that owns other property. Whether a gravel pit will benefit a commercial enterprise is not a criterion upon which approval or disapproval under the Ordinance may be based. The Board's decision expressly disapproved the application based on its own improper exercise of discretion as to the “worthiness” of the project and based on unlawful discrimination against the Applicant. Accordingly, the decision violates the Applicant's rights to due process and equal protection.

## II. Gravel Pit Permit

Under the Lamoine Gravel Pit Ordinance, there are seven criteria against which a permit to extract gravel is reviewed. They include:

1. Will not unreasonably result in unsafe or unhealthful conditions.
2. Will not unreasonably result in erosion or sedimentation.
3. Will not unreasonably result in water pollution, nor affect adversely existing

- ground water, springs, or ponds.
4. Will conserve natural beauty in keeping with the restoration provisions of this ordinance.
  5. Will not adversely affect public ways.
  6. Will not adversely affect surrounding properties.
  7. Is in conformance with the performance standards of Section 8.

At the hearing, the Board voted 5-0 that the permit application complied with every criterion except numbers 4 and 6. The vote on numbers four and six was 2-3. The overall vote on the permit application was 1-4 in favor of approval.

A. “Conserve Natural Beauty.”

- The Board’s vote as to criterion 4 is based on a misinterpretation of the plain language of the ordinance. Criterion 4 requires that the project “conserve natural beauty *in keeping with the restoration provisions of this ordinance.*” In this case, the Board failed to consider whether the restoration provisions of the ordinance were met and based its decision, instead, on whether the project would impact “natural beauty” as it currently exists. This was clearly erroneous.
- The Board’s interpretation of criterion 4 – to require conservation of “natural beauty” irrespective of the restoration standards that would help to define the meaning and scope of that term – is unconstitutionally vague. As Maine’s Law Court has expressly held, “[b]ecause the condition that all proposed developments ‘conserve natural beauty’ is an unmeasurable quality, totally lacking in cognizable quantitative standards, this condition is an unconstitutional delegation of legislative authority and violative of the due process clause.” *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 17, 752 A.2d 183, 187.

B. “Will Not Adversely Affect Surrounding Properties.”

In support of its decision that the application did not meet criterion 6, the Board made absolutely no findings of fact relating to the impact on surrounding properties. Instead, it again engaged in a wholly inappropriate and irrelevant analysis of whether the Applicant had “justif[ied] the need for a gravel pit.” Because the “need” for the pit is not relevant and because there are no findings of fact to support the Board’s conclusion that surrounding properties will be adversely affected, the Board’s decision must be overturned.





# ***Town of Lamoine, Maine***

*The Official Website of Lamoine's Town Government*

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## **Lamoine Planning Board**

### ***Minutes of December 7, 2010 (Draft, subject to correction)***

Chairman J. Holt opened three public hearings at 6:33 pm.

Board Members Present: D. Bamman, G. Donaldson, J. Gallagher, M. Garrett, J. Holt, M. Jordan, C. Tadema-Wielandt (6:58 pm).

Members of the Public in Attendance: R. Emery, D. Fennelly, J. Fowler, M. Hopkins, C. Korty, T. Latchaw, C. Lippitt, S. Salisbury, V. Srague

**Public Hearing #1. Site Plan Review Permit, D. Gott & Sons, Map 3, Lots 6 & 8.** S. Salisbury explained the intent of the proposal. Audience comments were heard as follows:

- C. Korty questioned why this proposal, essentially the same as one earlier denied by the Planning Board, was again being considered. (The answer is the proposal was submitted in a somewhat different format, requiring the Board to consider it.)
- R. Emery, using as background a tape of commercial trucks passing in front of her home on Mill Road, spoke in opposition to the proposal. The frequency and noise of these trucks render normal conversation difficult.

The hearing closed at 6:48 pm.

**Public Hearing #2. Gravel Permit, D. Gott & Sons, Map 3, Lots 6 & 8.** This hearing was combined with Public Hearing #1 above.

**Public Hearing #3. Gravel Permit, Harold MacQuinn, Inc. Map3, Lots 31 & 33.** S. Salisbury explained the gravel permit request.

The Public Hearing portion of the meeting closed a 7:05 pm. Chairman J. Holt moved immediately to the monthly agenda.

**Minutes of November 9, 2010.** G. Donaldson noted on page 2, item B. iii the word "includ" should read "include". The minutes were then accepted as amended.

**CEO Reports.** In the absence of the CEO, the reports were accepted and placed on file.

### **CONSERVATION COMMISSION**

C. Korty stated the current emphasis of the Commission is a study of open space in Lamoine.

### **OLD BUSINESS**

• **Action on Site Plan Permit Request. D. Gott & Sons, Map 3, Lots 6 & 8.** Conditions attached to this request in November (see Planning Board Minutes, November 9, 2010) have been met. G. Donaldson moved and J. Gallagher seconded a motion to find the application complete. The motion passed.

In the event the permit request is ultimately granted, two conditions will be stated on the face of the permit.

- A berm as shown on the concept drawings, will be completed within twelve months of permit approval.
- A copy of S.W. Cole's water monitoring report(s) will be sent to the Town CEO.

In discussion of Review Standard #1 (Preserve and Enhance the Landscape), the Board voted 2 in favor; 2 opposed; 1 abstention. The application failed to meet this standard. G. Donaldson will draft Findings of Fact for this action and the Board will consider them at its January 4, 2011 meeting.

J. Holt read a statement drawn in opposition to permit issuance. The essence of it is that the proposal is contrary to the vision of the comprehensive plan. J. Gallagher spoke in support of this contention. G. Donaldson moved and M. Garrett seconded a motion to approve the permit with the two conditions listed above. The vote was 0 in favor; 5 opposed. J. Gallagher then moved and G. Donaldson seconded a motion to deny the permit. This motions passed, 5 in favor; 0 opposed.

• **Action on the Gravel Permit, D. Gott & Sons, Map 3, Lots 6 & 8.** In consideration of the Gravel permit request, two standards failed to secure a favorable vote.

• **Standard 4. Will conserve the natural beauty in keeping with the restoration provisions of this ordinance.** By a vote of 2 in favor; 3 opposed, the Board found the application does not meet this standard.

• **Standard 6. Will not adversely affect surrounding properties.** By a vote of 2 in favor; 3 opposed, the Board found the application does not meet this standard.

G. Donaldson will draft Findings of Fact for these decisions and present them to the Board for consideration at the Board's January 4, 2011 meeting.

• **Action on a Gravel Permit, H. MacQuinn, Inc, Map 3, Lots 31 & 33.** With conditions established in November (see Planning Board Minutes, November 9, 2010) having been met G. Donaldson moved and M. Garrett seconded a motion to find the application complete. The vote was unanimous. In a review of performance standards, the Board notes the follow as being necessary conditions to permit approval.

**Performance Standard 8A.** Wherever lot lines appear on the map, there needs to be a buffer. The west end of the Kitteridge Pit and the north side of the Miro/MacQuinn line are cases in point.

**Performance Standard 8C.** The refueling pad needs with to be repaired or rebuilt.

**Performance Standard 8D.** The Board requests a statement from either MacQuinn or Miro accepting responsibility for implementing an approved restoration plan for **BOTH** lots 33 & 31.

**Performance Standard 8F.** There are two road issues. One, the access road needs to be moved to allow a 10' setback. And two, An "access" road appears on the map which, according to testimony, is not passable after a short distance. Either the road needs to be made passable or it should be removed from the map.

J. Gallagher moved and M. Garrett seconded a motion to approve the permit once the conditions are fulfilled.

### **NEW BUSINESS**

- **Site Plan Review pre application , Global Tower Assets, Map 4 Lot 17.** Maureen Hopkins described the proposal – a 190 foot monopole communication tower. Since no pre application was submitted and since not enough information to legitimize a pre application was available, the Board held an 'informal' discussion of the proposal.

- **Gravel Permit Renewals. J. Goodwin Jr. Map 1, Lot 75; MAP 4, Lot 41-1.** The permit for these lots expired on October 31, 2010. To the extent J. Goodwin is operating in these pits, he is doing so without a permit and in violation of Town Ordinances. M. Garrett was instructed to contact CEO D. Ford and ask him to write a certified letter in accordance with Section 7, H 3 of the Town of Lamoine Gravel Extraction Ordinance. If J. Goodwin proposes to make permit application, materials must be received two weeks BEFORE the Planning Board's January 4, 2011 meeting in order to be considered in January.

### **ORDINANCE DEVELOPMENT**

The Board set an ordinance development workshop for Tuesday, January 18, 2011 at 6:30 pm at the Town Hall.

The meeting adjourned at 10:30 pm.

Respectfully submitted,

Michael F. Garrett, Secretary.

### **PENDING COMMITMENTS**

**Tuesday, December 14, 2010. 6:30 pm. Meeting with Selectmen. Town Hall**

**Tuesday, January 4, 2011. Monthly meeting. 7:00 pm. Town Hall**

**Tuesday, January 18, 2011. Ordinance Development Workshop. Town Hall 6:30 pm**

**Tuesday, February 1, 2011. Monthly Meeting. Town Hall**

To: Whom it may concern

From: Lamoine Planning Board

Re: Reasons for denial of a Site Plan Review Permit and a Gravel Permit sought by Doug Gott & Sons, Inc. for a proposed project named 'B&H Pit Expansion' located on Map 3, lots 6 & 8.

Date: January 5, 2011

At its December 7, 2010, meeting, the Lamoine Planning Board denied a Site Plan Review Permit sought by Doug Gott & Sons, Inc., for a proposed project named "B&H Pit Expansion" located on Map 3, lots 6 & 8. The Board found that the applicant failed to meet Review Standard 1 and Review Standard 16. This documents states the reasons for the denials.

### Site Plan Review Ordinance

#### Review Standard 1. Preserve and enhance the landscape.

The Site Plan Review Ordinance obligates the Town to 'protect the health, welfare and safety of the residents of the town of Lamoine' and to "balance the rights of landowners to use their land with the corresponding rights of abutting and neighboring landowners to live without undue disturbances from nuisances such as, but not limited to noise, smoke, fumes, dust, odor, glare, traffic, storm water runoff or the pollution of ground or surface waters..." Site Plan Review, Section F. Purpose.

The Gott proposal to expand an existing gravel pit to the boundary of several residences for the expressed primary purpose of storing materials does not justify the removal of trees and exposure of residents to the loss of natural landscapes. Several residents spoke at the public hearing of the harmful effects of expanding gravel mining in a large area of the town where the landscape has been heavily altered and where little meaningful restoration has occurred.

Further, the applicant stated more than once that this site hold little value as a source of gravel, its primary purpose being that of storage of materials. The Board noted that Gott & Sons owns considerable land adjacent to or near the proposed site which can used for the proposed primary purpose of storage. In short, the desire of the applicant for additional storage area does not outweigh the loss of natural landscape available to neighbors and residents of the town.

The Planning Board did not vote in the affirmative that the application met this standard.

Vote: Two (2) voted that the Review Standard had been met. Two (2) voted that the Review Standard had not been met. One (1) abstained from voting.

Review Standard 16. The development shall be in conformance with the comprehensive plan.

The Site Plan Review criteria which calls for a proposed use to be in conformance with the Comprehensive Plan of Lamoine mandates a duty to view any project within its larger contexts of the particular district in which it is located, Lamoine as a whole and Town's vision for itself as a community. The Comprehensive Plan envisions Lamoine as essentially a residential community, with the residents enjoying features typical of a rural community, with perhaps many of them engaging in a variety of home occupations, including agriculture, and with limited commercial ventures taking place. Large scale industrial uses constitute something of a threat to the pastoral nature and vision of the town. Consequently, most of the Town of Lamoine is zoned Rural / Agricultural and the Planning Board is given the authority to make a judgment about whether or not any proposed industrial use, such as large-scale sand and gravel extraction, in the Rural and Agricultural zone, is appropriate or not, and to what extent.

The Comprehensive Plan acknowledges the existence of significant deposits of sand and gravel and states matter-of-factly that extraction of sand and gravel will take place. There is thus the expectation that the Town as a residential community and as a source of sand and gravel needs to coexist. The strategic issue is the balance that needs to be achieved for this coexistence to be satisfactory to the citizens of Lamoine, who wish to enjoy a quality of life to which we feel we are entitled as a rural community.

Some of the sand and gravel extraction is done by Lamoine residents who have need of the various earth materials as they pursue their occupations as contractors, for such purposes as septic systems, driveways, backfill for foundation work, and sanding driveways. As fellow residents, we understand these needs and uses, as limited and as periodic as they are.

However, the great bulk of the sand and gravel extraction is undertaken by a few nonresident corporations with land holdings of their own in Lamoine as well as extraction leases on land owned by others. These large corporations by and large remove the sand and gravel from the town limits for their operations elsewhere in the county. The town benefits financially in a very limited way but also endures the significant alteration of its natural landscape – some would call it strip mining, as entire large hills are removed from the earth - heavy use of its roads, nearly continual noise, and the always potential threat of accidents over the precious aquifer or on the roads.

The extent of this sand and gravel excavation is tremendous. With the exception of Sundays, gravel trucks travel up and down the roads of Lamoine. Empty trucks roll into Town well before 6:00 a.m. Gravel operations currently are permitted until 6:00 p.m., or sundown, whichever occurs later, a minimum 12-hour day. For a resident who lives along certain sections of Lamoine Beach Road, Douglas Highway, and Jordan River Road, it feels like one is living in an industrial zone, not a rural agricultural country setting.

Further complicating the issue is that, according to the Comprehensive Plan, the land extending from the Village (Lamoine Corner) to Blunt's Pond appears to have the most suitable soils for residential housing in the Town. Nowhere is sand and gravel extraction more concentrated than in this same area, an area bounded broadly by portions of Mill Road, Walker Road, Asa's Lane and Lamoine Beach Road. When one studies the tax maps of the Town, one finds that the three companies of Doug Gott, John Goodwin and RJ Jordan currently own over 300 acres in this area. With the exception of the 5.6 acre Stephens Lot, into which the applicant wishes to expand operations, all of the parcels owned by these companies contain currently licensed gravel pits. In addition, Gott has current agreements with two landowners whose parcels total over 50 acres which allow Gott to extract sand and gravel. A recently expired agreement with the Town of Lamoine had permitted Gott to extract gravel from portions of a town-owned parcel of nearly 40 acres. The result is current and past extraction on a combined parcel of over 400 acres, nearly wholly contained within the identified sand and gravel aquifer and on the land in town deemed most suitable for residential development. The visual result of the extraction is clearly observable to town residents. Some of the land in this large area has been mined literally to the water table

and some to as little as 2 feet above the water table. Current permits allow excavation to within 5 feet of the water table. Again, the Comprehensive Plan understands this area of Town to have some of the more suitable soils for residential development. One can raise legitimate questions about the usefulness of the land for housing and residential purposes once it has mined to the extent that it already has been and will continue to be mined in currently active pits.

The proposed expansion into the so-called Stephen's Lot is located on the edge of the existing permitted area, and abuts three residential properties along its northern boundary and is across Lamoine Beach Road from several others. Were a permit granted for this proposed pit, it would expand the sand and gravel extraction area yet further into land zoned essentially for residences, and radically change the topography of the parcel, including removal of trees and topsoil from portions of the lot, further despoiling the visual appeal of the area for years to come. The applicant has stated that the use for the pit will be primarily stockpiling of sand, loam and gravel. It would not provide a significant source of fresh sand and gravel. Gott owns other pits in the vicinity on which stockpiling could easily take place without despoiling additional land.

There is no compelling need for this particular parcel to be permitted as a gravel pit. Indeed, in keeping with the spirit of the Town's Comprehensive Plan, in light of the scope of sand and gravel excavation already permitted in this section of Town, and considering other matters of noise, gravel trucks on the roads, and potential for water pollution, there is sufficient reason to justify a conclusion that the proposed project is not in conformance with the Comprehensive Plan.

The Planning Board voted unanimously that the application failed to meet Review Standard 16.

(Vote: 0 found the development to be in conformance with the Comprehensive Plan.

5 found the development not to be in conformance with the Comprehensive Plan.)

#### Gravel Permit.

Review Standard 4. Will conserve natural beauty in keeping with the restoration provisions of this ordinance.

The applicant proposes to remove all trees from the proposed pit area including those on the westerly end of the pit which will be only slightly excavated (5-10' of 'brown find sand' with 'traces' of silt and gravel). Members of the board question the 'loss of natural beauty' in exchange for what the applicant admits is material of little value.

The Planning Board found that the application did not meet Review Standard 4.

Vote: Two (2) who voted the standard had been met; three (3) who voted that the standard had not been met

Review Standard 6. Will not adversely affect surrounding properties.

The board has heard testimony at two Public Hearings regarding the intrusion of gravel mining operations further into the residential neighborhoods to the west and north of this location. Some residents question the impact of this expansion on the property values of neighboring properties.

Further, the applicant stated more than once that this site holds little value as a site for the 'excavation' and 'extraction' of gravel as there is, to quote the applicant's representative, "not really very much gravel in there". Excavation and extraction are two essential reasons for a gravel pit, as stated in Section 1 of the Lamoine Gravel Ordinance. As present, Gott & Sons owns considerable acreage adjacent to and nearby the proposed B&H expansion area. This acreage could be used for the storage purposes noted as the primary reason for the application. In short, the 'gain' to the applicant does not outweigh the loss to neighbors and residents of the town.

Citizen testimony and the failure of the applicant to justify the need for a gravel pit in this location convinced the majority of the Planning Board that the proposal would adversely affect surrounding properties.

The Planning Board found that the application did not meet Review Standard 6.

Vote: Two (2) who voted that the Review Standard was met; three (3) voted that it was not met.



# Town of Lamoine – Planning Board Gravel Permit Findings & Fact & Decision

Applicant(s)	Doug Gott & Sons	Date Reviewed	December 7, 2010
Map & Lot	Map 3 Lots 6 & 8	Fee Received	\$300.00
# of Acres	10	Date Application Found Complete	11/9/10
New or Renewal	Expanded	Date of Public Hearing (if any)	12/7/10

## Review Criteria

Item	Yes Votes	No Votes	N/A	Reason for Vote No
1. Will not unreasonably result in unsafe or unhealthful conditions.	5	0		
2. Will not unreasonably result in erosion or sedimentation.	5	0		
3. Will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or ponds.	5	0		
4. Will conserve natural beauty in keeping with the restoration provisions of this ordinance.	2	3		
5. Will not adversely affect public ways.	5	0		
6. Will not adversely affect surrounding properties.	2	3		
7. Is in conformance with the performance standards of Section 8.				
Section 8A. Excavation	5			
Section 8B. Screening	5			
Section 8C. Groundwater Protection	5			
Section 8D. Restoration	5			
Section 8E. Transportation.	5			
Section 8F. Access	5			
Section 8G. Hours of Operation	5			
Section 8H. Noise	5			
Section 8I. Report Required	5			

Based on the above findings of fact, this application is    Approved X Denied    Approved with conditions. (List reasons for denial or conditions on back)

John S. Hill, Chair – Lamoine Planning Board  
(Planning Board to fill out one copy of this form and submit it as part of the official file of the above referenced project)

# Lamoine Planning Board – Site Plan Review Criteria Record of Findings

Applicant	Doug Gott & Sons
Map & Lot	Map 3 Lot 8 # 6
Date Reviewed	December 7, 2010
Fee Paid	\$450 *

Review Standard	Votes Yes	Votes No	Reasons/Comments
1. Preserve and Enhance the Landscape	2	2	1 ABSTAIN
2. Relation of Proposed Buildings to Environment			N/A
3. Vehicular Access	5	0	
4. Parking Design Requirements			N/A
5. Off-Street Parking Requirements			N/A
6. Buffering and Screening	5	0	BERM TO BE COMPLETED IN 12 MONTHS
7. Exterior Lighting	5	0	
8. Municipal Services			N/A
9. Surface Water	5	0	
10. Groundwater Protection	5	0	MONITORING REPORTS TO TOWN CLO
11. Air Pollution	5	0	
12. Odor	5	0	
13. Noise	5	0	
14. Sewage Disposal			N/A
15. Utilities/Waste Disposal/Water Supply			N/A
16. Comprehensive Plan	0	5	
17. Stormwater Drainage	5	0	
18. Conservation, Erosion and Sediment Control	5	0	
19. Advertising Features			N/A
20. Financial and Technical Capacity	5	0	

Application is ☐ Approved  
☐ Approved with Conditions (list on back)  
☒ Denied (State Reasons for denial below)

Signed, 

Chair, Lamoine Planning Board

(Planning Board to fill out one copy of this form and submit it as part of the official file of the above referenced project) – (If approved or approved with conditions, the signed copy of this form shall serve as the official permit)

- D. Retain Resource Protection Zones to include the first 100 ft. in the Shoreland Zone and such areas that may fall within the Hazardous Flood Plain Zone. This should simplify the protection of these areas.
- E. Establish a Residential Zone which would permit any type residence, single, mobile home, duplex, or multiple housing. Commercial usage would be excluded except home occupancy types involving no more than two employees in addition to household residents. This zone would include both sides of the Buttermilk road, on the east to a line 800 feet from Route 184 and paralleling it, and on the west to the Trenton line, and extending from the Ellsworth line to its intersection with the Development Zone at Route 204. This is to protect this area from strip development and preserve a low cost housing area convenient to the job market in Ellsworth. Subdivisions within this zone, provided with public water and sewage connections and connected to such and providing their own entrance road, may reduce the frontage requirement on such roads within the development to 100 ft. per unit. Provisions shall be developed for multiple unit housing with public water and sewage connections requiring such units to provide adequate open areas and screening exclusive of their parking requirements. All new subdivisions having 15 or more units shall provide single entrances and screening of at least 50 feet depth along the road from which they have their entrance. Non-traditional arrangements of housing, so-called cluster developments, with public water and sewage systems, may be considered by the planning board, providing these meet the other overall criteria for land use. The Planning board may require long-term protection within such developments for critical wetlands, wildlife, and recreational areas. Cluster developments in this zone must meet the overall frontage and acreage requirements applicable in this zone but individual lots within the development may be below the minimum providing net residential density is no greater than is permitted in the Residential Zone and all other requirements for cluster development projects as specified in the land use ordinance are met.
- F. Establish a Development Zone, land use rules remaining, as they now exist. This zone would be T shaped consisting of the Jordan River Road (Route 204) from the Trenton line to Route 184 and along Route 184 from the south end of the Richard King lot to the north end of the abandoned gravel pit beyond the Town Hall. On the shore side of the T, the zone would extend to the Shoreland zone along the ocean. On all other sides of the T, the zone would extend 800 feet back from the road. This area has substantial commercial usage now, is the area of highest traffic flow in the community and is centrally located.
- G. The remainder of the town shall be classified Rural and Agricultural with rules similar to the current land use rules but more restrictive to commercial uses and encouraging to agricultural usage, permitting residential usage, including (but not limited to) bed and breakfasts, housing for the elderly, and nursing homes. This area would prohibit heavy industrial usages, quarrying and mining of all types but sand and gravel removal would still be permitted. Also prohibited would be new private dumps, automobile graveyards, and any usages that might lead to toxic waste contamination of the aquifer.

## WITNESS LIST

The Appellant, Doug Gott & Sons, Inc. intends to call the following witnesses in support of its appeal of the Lamoine Planning Board's denial of Site Plan Review Approval and its denial of Doug Gott & Sons, Inc.'s application for a Gravel Permit.

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